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THE DECISION OF THE SUPREME COURT OF THE UNITED STATES ON THE SALE OF IMPORTED GAME.

On November 2, 1908, a decision was rendered by the Supreme Court of the United States which directly affects dealers in game, importers, and many persons engaged in the millinery trade and is also of unusual interest to sportsmen and friends of game protection. Comparatively few cases involving the construction of the game laws have ever reached the Supreme Court, and twelve years have intervened since the last decision of this kind was rendered. On March 2, 1896, the court handed down a decision in the Geer case (Geer *v.* Connecticut, 161 U. S. 519) sustaining the right of the State to prohibit the export of game, and on May 25, 1896, it decided the Race Horse case (Ward *v.* Race Horse, 163 U. S. 504), in which it sustained the right of the State of Wyoming to regulate hunting by Indians in the State notwithstanding a treaty made by the United States with the Indians prior to the admission of Wyoming to the Union. Both of these decisions have become precedents frequently referred to and depended on by other courts in the settlement of a number of questions which have arisen under the game laws.

The present decision in the Silz case disposes of the question whether a State has the right to regulate possession and sale of game taken outside its boundaries—a question which has been before the State courts in one phase or another for more than thirty-five years, and which is here presented in an extreme form, namely, regulation of the sale of game imported from foreign countries. The decision is here published in full, and in view of the wide interest in the question involved it seems desirable to preface the text with a full statement of the circumstances under which the case reached the Supreme Court, and to add a brief history of the question in the State courts.

HISTORY OF THE SILZ CASE.

The Silz case, known under the title People ex rel. Silz *v.* Hesterberg, arose in Brooklyn, Kings County, N. Y. On April 6, 1905, John Hill, proprietor of the Clarendon Hotel in Brooklyn, was arrested for having in possession in close season 24 brace of English plover and Russian grouse. These birds had been purchased from August Silz, one of the largest importers of foreign game in New York City. Silz

at once became a party to the case and on the next day was arrested by Henry Hesterberg, the sheriff of the county, for having in possession on March 30, 1905, in Kings County, N. Y., one golden plover from England and one blackcock from Russia. The birds were worth $1.50 and the penalty for their possession in close season was $50. This game was said to have been captured in the open season, purchased in London, and imported into the United States in accordance with the tariff law and regulations. Silz immediately made application to the supreme court in Brooklyn for a writ of habeas corpus, and on the same day, April 7, the writ was issued. On June 16, 1905, this writ was quashed and the relator remanded to the custody of the sheriff. The case was then appealed by the relator and on November 29 a majority decision favorable to Silz, discharging him from custody, was rendered in the appellate division of the supreme court (109 App. Div. N. Y. 295). On February 27, 1906, however, the court of appeals reversed this decision and again remanded the relator to the custody of the sheriff of Kings County. The court reviewed at length the previous cases and construed section 5 of the Lacey Act relating to the importation of game and its protection under local laws (People ex rel. Hill *v.* Hesterberg and People ex rel. Silz *v.* Hesterberg, 184 N. Y. 126). On July 27, 1906, the final order quashing and dismissing the writ of habeas corpus was issued.[1]

In 1907 the case was appealed to the Supreme Court of the United States on writ of error. It was advanced on the docket in compliance with a motion to that effect made in January, 1908, and was argued October 15, on the opening of the present term of the court. The plaintiff in error (Silz) contended:

(1) That the provisions of the forest, fish, and game law of New York were in contravention of the fourteenth amendment of the Constitution of the United States in depriving the relator of his liberty and property without due process of law.

(2) That said provisions constituted an unjustifiable interference with and regulation of interstate and foreign commerce in violation of section 8 of article I of the Constitution.

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[1] Those who are interested in tracing the history of this case in greater detail will find the various steps mentioned and copies of the decisions of the appellate division of the supreme court, the court of appeals, and the Supreme Court of the United States given in the following series of articles in Forest and Stream: Vol. LXIV, pp. 289, 449, Apr. 15, June 10, 1905; Vol. LXV, pp. 465, 472, Dec. 9, 1905; Vol. LXVI, pp. 375, 384, 387, Mar. 10, 1906, and Vol. LXXI, pp. 767, 774, Nov. 14, 1908. See also Am. Field, LXX, pp. 395, 443, 1908.

The case should not be confused with a similar action (People *v.* August Silz) brought about the same time in the supreme court in New York City, based on the possession on April 29, 1904, of certain foreign game, including English pheasants, partridges, blackcock, and Russian (tame) ducks. The latter case is mentioned in Forest and Stream: Vol. LXIV, pp. 309, 332, Apr. 22, 1905; Vol. LXV, pp. 145, 170, Aug., 1905.

(3) That the court of appeals of New York erred in its construction and interpretation of the act of Congress of May 25, 1900, commonly known as the Lacey Act (31 Stat., 187).

In support of these contentions a brief was filed discussing the following points at length:

I. That "the provisions of the forest, fish, and game law are unconstitutional, in that they deprive the individual of his liberty and property without due process of law."

II. That said law "is not a proper and reasonable exercise of the police power of the State, and therefore is not in that way taken without the prohibition of the Federal Constitution against depriving the individual of his liberty or property without due process of law."

III. That "section 5 of the Lacey Act * * * has no application to game birds imported from foreign countries."

IV. That "the provisions of the forest, fish, and game law are unconstitutional, in that they unjustifiably restrict and interfere with foreign commerce."

V. That the provisions of said law "making the possession of a pure and wholesome article of food * * * a crime, are not within the police power of the State, and in that way taken without the operation of the commerce clause of the Federal Constitution."

VI. That "on all of the several grounds above discussed * * * the judgment below should be reversed."

In support of the motion to advance the case the plaintiff urged as reasons for the application that this was a criminal case and involved questions of great importance and general public interest; that it was a proceeding to test the validity of legislation of a more or less novel character; and that the business of importing foreign game into New York was a large and important one and must necessarily remain in uncertainty pending settlement of the case. Furthermore, it was the intention to have the legislature of New York revise and codify all the game laws of the State at the session which commenced January 1, 1908, and a final decision on the law in question would be of great aid in such revision.

Finally on November 2, 1908, the Supreme Court rendered its decision, which affirmed the judgment of the court of appeals of New York. In concluding the opinion it declared:

> In the aspect in which the game law of New York is now before this court we think it was a valid exertion of the police power, independent of any authorization thereof by the Lacey Act * * *. We think the legislature, in the particulars in which the statute is here complained of, did not exceed the police power of the State nor run counter to the protection afforded the citizens of the State by the Constitution of the United States.

The full text of the decision is as follows:

SUPREME COURT OF THE UNITED STATES.

No. 206.—October Term, 1908.

The People of the State of New York ex rel. August Silz, plaintiff in error, *v.* Henry Hesterberg, Sheriff of the County of Kings.	In error to the Supreme Court of the State of New York.

[November 2, 1908.]

Mr. Justice Day delivered the opinion of the court.

This case comes to this court because of the alleged invalidity, under the Constitution of the United States, of certain sections of the game laws of the State of New York. Section 106 of chapter 20 of the Laws of 1900 of the State of New York provides:

"Grouse and quail shall not be taken from January first to October thirty-first, both inclusive. Woodcock shall not be taken from January first to July thirty-first, both inclusive. Such birds shall not be possessed in their closed season except in the city of New York, where they may be possessed during the open season in the State at large."

Section 25 of the law provides:

"The closed season for grouse shall be from December first to September fifteenth, both inclusive." As amended by section 2, chapter 317 Laws of 1902.

Section 140 of the law provides:

"I.—Grouse includes ruffed grouse, partridge and every member of the grouse family."

Section 108 of the law provides:

"Plover, curlew, jacksnipe, Wilsons, commonly known as English snipe, yellow legs, killdeer, willet snipe, dowitcher, shortnecks, rail, sandpiper, bay-snipe, surf snipe, winter snipe, ringnecks and oxeyes shall not be taken or possessed from January first to July fifteenth, both inclusive." As amended by section 2, chapter 588, Laws 1904.

Section 141 of the law provides:

"Whenever in this act the possession of fish or game, or the flesh of any animal, bird or fish is prohibited, reference is had equally to such fish, game or flesh coming from without the State as to that taken within the State: *Provided, nevertheless*, That if there be any open season therefor, any dealer therein, if he has given the bond herein provided for, may hold during the closed season such part of his stock as he has on hand undisposed of at the opening of such close season. Said bond shall be to the people of the State, conditioned that such dealer will not, during the close season ensuing, sell, use, give away, or otherwise dispose of any fish, game or the flesh of any animal, bird or fish which he is permitted to possess during the close season by this section; that he will not in any way during the time said bond is in force violate any provision of the forest, fish and game law; the bond may also contain such other provisions as to the inspection of the fish and game possessed as the commission shall require, and shall be subject to the approval of the commission as to amount and form thereof, and the sufficiency of sureties. But no presumption that the possession

of fish or game or the flesh of any animal, bird or fish is lawfully possessed under the provisions of this section shall arise until it affirmatively appears that the provisions thereof have been complied with." Added by chapter 194, Laws of 1902.

Section 119 of the law makes a violation of its provisions a misdemeanor, and subjects the offending parties to a fine.

The relator, a dealer in imported game, was arrested for unlawfully having in his possession on the thirtieth of March, 1905, being within the closed season, in the borough of Brooklyn, city of New York, one dead body of a bird known as the golden plover, and one dead body of an imported grouse, known in England as blackcock, and taken in Russia. The relator filed a petition for a writ of *habeas corpus* to be relieved from arrest, and upon hearing before a justice of the Supreme Court of the State of New York the writ was dismissed, and the relator remanded to the custody of the sheriff. Upon appeal to the Appellate Division of the Supreme Court of the State of New York this order was reversed and the relator discharged from custody. The judgment of the Appellate Division was reversed in the Court of Appeals of the State of New York. 184 N. Y. 126. Upon remittitur to the Supreme Court of the State of New York from the Court of Appeals the final order and judgment of the Court of Appeals was made the final order and judgment of the Supreme Court, and a writ of error brings the case here for review.

The alleged errors relied upon by the plaintiff in error for reversal of the judgment below are: First, that the provisions of the game law in question are contrary to the Fourteenth Amendment of the Constitution of the United States, in that they deprive the relator, and others similarly situated, of their liberty and property without due process of law. Second, that the provisions of the law contravene the Constitution of the United States, in that they are an unjustifiable interference with and regulation of interstate and foreign commerce, placed under the exclusive control of Congress by section 8, article 1, of the Federal Constitution. Third, that the court below erred in construing the act of Congress, commonly known as the Lacey Act, which relates to the transportation in interstate commerce of game killed in violation of local laws. 31 Stat. at Large, chap. 553, p. 187.

The complaint discloses that the relator, August Silz, a dealer in imported game, had in his possession in the city of New York one imported golden plover, lawfully taken, killed and captured in England during the open season for such game birds there, and thereafter sold and consigned to Silz in the city of New York by a dealer in game in the city of London. He likewise had in his possession the body of one imported blackcock, a member of the grouse family, which was lawfully taken, killed and captured in Russia during the open season for such game there, and thereafter sold and consigned to Silz in New York city by the same dealer in London. Such birds were imported by Silz, in accordance with the provisions of the tariff laws and regulations in force, during the open season for grouse and plover in New York. Such imported golden plover and imported blackcock are different varieties of game birds from birds known as plover and grouse in the State of New York; they are different in form, size, color and markings from the game bird known as plover and grouse in the State of New York, and can be readily distinguished from the plover and grouse found in that State. And this is true when they are cooked and ready for the table. The birds were sound, wholesome and valuable articles of food, and recognized as articles of commerce in different countries of Europe and in the United States. These statements of the complaint are the most favorable possible to the relator, and gave rise to the comment in the opinion of the Court of Appeals that the case was possibly collusive. That court nevertheless proceeded to consider the case on the facts submitted and a similar course

will be pursued here. While the birds mentioned, imported from abroad, may be distinguished from native birds, they are nevertheless of the families within the terms of the statute, and the possession of which, during the closed season, is prohibited.

As to the first contention, that the laws in question are void within the meaning of the Fourteenth Amendment because they do not constitute due process of law. The acts in question were passed in the exercise of the police power of the State with a view to protect the game supply for the use of the inhabitants of the State. It is not disputed that this is a well-recognized and often-exerted power of the State and necessary to the protection of the supply of game which would otherwise be rapidly depleted, and which, in spite of laws passed for its protection, is rapidly disappearing from many portions of the country.

But it is contended that while the protection of the game supply is within the well-settled boundaries of the police power of a State, that the law in question is an unreasonable and arbitrary exercise of that power. That the legislature of the State is not the final judge of the limitations of the police power, and that such enactments are subject to the scrutiny of the courts and will be set aside when found to be unwarranted and arbitrary interferences with rights protected by the Constitution in carrying on a lawful business or making contracts for the use and enjoyment of property, is well settled by former decisions of this court. *Lawton* v. *Steele*, 152 U. S. 137; *Holden* v. *Hardy*, 162 U. S. 366; *Dobbins* v. *Los Angeles*, 195 U. S. 236.

It is contended, in this connection, that the protection of the game of the State does not require that a penalty be imposed for the possession out of season of imported game of the kind held by the relator. It is insisted that a method of inspection can be established which will distinguish the imported game from that of the domestic variety, and prevent confusion in its handling and selling. That such game can be distinguished from domestic game has been disclosed in the record in this case, and it may be that such inspection laws would be all that would be required for the protection of domestic game. But, subject to constitutional limitations, the legislature of the State is authorized to pass measures for the protection of the people of the State in the exercise of the police power, and is itself the judge of the necessity or expediency of the means adopted. In order to protect local game during the closed season it has been found expedient to make possession of all such game during that time, whether taken within or without the State, a misdemeanor. In other States of the Union such laws have been deemed essential, and have been sustained by the courts. *Roth* v. *State*, 51 O. S. 209; *Ex parte Maier*, 103 Cal. 476; *Stevens* v. *The State*, 89 Md. 669; *Magner* v. *The People*, 97 Ill., 320. It has been provided that the possession of certain kinds of game during the closed season shall be prohibited, owing to the possibility that dealers in game may sell birds of the domestic kind under the claim that they were taken in another State or country. The object of such laws is not to affect the legality of the taking of game in other States, but to protect the local game in the interest of the food supply of the people of the State. We can not say that such purpose, frequently recognized and acted upon, is an abuse of the police power of the State, and as such to be declared void because contrary to the Fourteenth Amendment of the Constitution.

It is next contended that the law is an attempt to unlawfully regulate foreign commerce which, by the Constitution of the United States, is placed wholly within the control of the Federal Congress. That a State may not pass laws directly regulating foreign or interstate commerce has frequently been held in the decisions of this court. But while this is true, it has also been held in repeated instances that laws passed by the States in the exertion of their police power, not in conflict with laws of Congress upon the same subject, and indi-

rectly or remotely affecting interstate commerce, are nevertheless valid laws. *M., K. & T. Ry. Co.* v. *Haber*, 169 U. S. 613; *Pennsylvania Co.* v. *Hughes*, 191 U. S. 477; *Asbell* v. *Kansas*, 209 U. S. 251.

In the case of *Geer* v. *Connecticut*, 161 U. S. 517, the plaintiff in error was convicted for having in his possession game birds killed within the State, with the intent to procure transportation of the same beyond the State limits. It was contended that this statute was a direct attempt by the State to regulate commerce between the States. It was held that the game of the State was peculiarly subject to the power of the State which might control its ownership for the common benefit of the people, and that it was within the power of the State to prohibit the transportation of game killed within its limits beyond the State, such authority being embraced in the right of the State to confine the use of such game to the people of the State. After a discussion of the peculiar nature of such property and the power of the State over it, Mr. Justice White, who delivered the opinion of the court in that case, said:

"Aside from the authority of the State, derived from the common ownership of game and the trust for the benefit of its people which the State exercises in relation thereto, there is another view of the power of the State in regard to the property in game, which is equally conclusive. The right to preserve game flows from the undoubted existence in the State of a police power to that end, which may be none the less efficiently called into play, because by doing so interstate commerce may be remotely and indirectly affected. *Kidd* v. *Pearson*, 128 U. S. 1; *Hall* v. *De Cuir*, 95 U. S. 485; *Sherlock* v. *Alling*, 93 U. S. 99, 103; *Gibbons* v. *Ogden*, 9 Wheaton, 1. Indeed, the source of the police power as to game birds (like those covered by the statute here called in question) flows from the duty of the State to preserve for its people a valuable food supply. *Phelps* v. *Racey*, 60 N. Y. 10; *Ex parte Maier*, *ubi sup.*; *Magner* v. *The People*, *ubi sup.*, and the cases there cited. The exercise by the State of such power therefore comes directly within the principle of *Plumley* v. *Massachusetts*, 155 U. S. 461, 473. The power of the State to protect by adequate police regulation its people against the adulteration of articles of food, (which was in that case maintained,) although in doing so commerce might be remotely affected, necessarily carries with it the existence of a like power to preserve a food supply which belongs in common to all the people of the State, which can only become the subject of ownership in a qualified way, and which can never be the object of commerce except with the consent of the State and subject to the conditions which it may deem best to impose for the public good."

In the case of *Plumley* v. *Massachusetts*, referred to in the opinion just cited, 155 U. S. 461, 473, it was held that a law of the State of Massachusetts which prevented the sale of oleomargarine colored in imitation of butter was a legal exertion of police power on the part of the State, although oleomargarine was a wholesome article of food transported from another State, and this upon the principle that the Constitution did not intend, in conferring upon Congress an exclusive power to regulate interstate commerce, to take from the States the right to make reasonable laws concerning the health, life and safety of its citizens, although such legislation might indirectly affect foreign or interstate commerce, and the general statement in *Sherlock* v. *Alling*, 93 U. S. 99, was quoted with approval:

"And it may be said generally, that the legislation of a State, not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit."

It is true that in the case of *Schollenberger* v. *Pennsylvania*, 171 U. S. 1, it was held that a State law directly prohibiting the introduction in interstate commerce of a healthful commodity for the purpose of thereby preventing the traffic in adulterated and injurious articles within the State, was not a legitimate exercise of the police power. But in that case there was a direct, and it was held unlawful, interference with interstate commerce as such. In the case at bar the interference with foreign commerce is only incidental and not the direct purpose of the enactment for the protection of the food supply and the domestic game of the State.

It is provided in the New York statutes that game shall be taken only during certain seasons of the year, and to make this provision effectual it is further provided that the prohibited game shall not be possessed within the State during such times, and owing to the likelihood of fraud and deceit in the handling of such game the possession of game of the classes named is likewise prohibited, whether it is killed within or without the State. Such game may be legally imported during the open season, and held and possessed within the State of New York. It may be legally held in the closed season upon giving bond as provided by the statute against its sale. Incidentally, these provisions may affect the right of one importing game to hold and dispose of it in the closed season, but the effect is only incidental. The purpose of the law is not to regulate interstate commerce, but by laws alike applicable to foreign and domestic game to protect the people of the State in the right to use and enjoy the game of the State.

The New York Court of Appeals further held that the so-called Lacey Act (31 Stat. 187) relieved the regulation of the objection in question because of the consent of Congress to the passage of such laws concerning such commerce, interstate and foreign, within the principles upon which the Wilson Act was sustained by this court. *In re Rahrer*, 140 U. S. 545.

In the aspect in which the game law of New York is now before this court we think it was a valid exertion of the police power, independent of any authorization thereof by the Lacey Act, and we shall therefore not stop to examine the provisions of that act. For the reasons stated, we think the legislature, in the particulars in which the statute is here complained of, did not exceed the police power of the State nor run counter to the protection afforded the citizens of the State by the Constitution of the United States.

Judgment affirmed.

HISTORY OF THE QUESTION OF THE RIGHT OF A STATE TO REGULATE POSSESSION AND SALE OF GAME TAKEN OUTSIDE ITS BOUNDARIES.

For more than thirty-five years the question whether a State can regulate possession and sale of game captured beyond its borders has been before the State courts. It has been carried to the higher courts in at least fourteen States, namely: California, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New York, Ohio, Oregon, Pennsylvania, Washington, and the District of Columbia. Every possible phase of the question seems to have been passed upon, but the principle is identically the same whether possession or sale of game, fish, or plumage is involved. Most of the cases, as would naturally be expected, have dealt with game imported from other States; but one case in Massachusetts and at least four in New York were

based on game or fish brought from foreign countries. The various kinds of game include deer, rabbits, quail, ruffed grouse, prairie chickens, English pheasants, blackcock, woodcock, golden plover, and ducks. Other subjects of decisions were plumage, fish, and short lobsters.

The first case arose in New York in 1873 and has been widely quoted as a precedent in other State courts. Royal Phelps, as president of the New York Society for the Protection of Game, secured the conviction of Joseph H. Racey, a game dealer of New York City, for the possession of 100 quail out of season. A fine of $2,500 was imposed and an appeal was taken. The defendant contended that as the birds were held in cold storage and had been imported from the West, where they had been lawfully killed, they were articles of interstate commerce and, as such, were not subject to the New York law. The case was decided in 1875 by the court of appeals, which held that the State had authority to regulate the possession and sale of game irrespective of the place of capture (Phelps *v.* Racey, 60 N. Y. 10).

In the following year (1876) a similar decision was rendered by the court of appeals of St. Louis, Mo. In 1880 a question involving the sale of woodcock from Pennsylvania in Boston was carried to the supreme court of Massachusetts. This court discussed the decision in Phelps *v.* Racey and distinguished the difference in the statutes on which the two cases were based, holding that the sale in question did not constitute an offense under the Massachusetts law as then worded, In 1881 a strong decision following the principle laid down in Phelps *v.* Racey was rendered by the supreme court of Illinois. Thus within the first decade, three of the four cases which reached the higher courts were decided in favor of the State, and the adverse decision in the fourth was due to the language of the statute and not to an unfavorable construction of the principle. It is not necessary to examine in detail all the cases involving this principle which have been decided in recent years. It will be sufficient to mention that most of the courts that passed on the question have sustained the right of the State to regulate sale and possession of game and fish imported from another State or country. New York, beside furnishing the first case maintaining this principle, has also furnished most of the cases on this point, two of them adverse, and through the Silz case has brought about a final settlement of the question by the Supreme Court of the United States. It is interesting to note also that the Silz case, since its decision by the New York court of appeals, has served as a precedent for at least four other cases in the supreme court of New York and an important case involving the sale of aigrettes in the supreme court of Louisiana. Recently, in July, 1908, it was utilized in a hearing before a committee of the House of Lords in connection with a measure to regulate the importation of feathers for millinery purposes into Great Britain.

The various decisions which have been rendered by the higher courts are given in the following list. This list is arranged chronologically and includes the title and reference of each case and a statement of the kind of game or fish involved.

DECISIONS ON POSSESSION AND SALE OF IMPORTED GAME AND FISH.

1875, New York: Phelps *v.* Racey (60 N. Y. 10).
Based on quail and grouse from Minnesota and Illinois offered for sale in New York City.

1876, Missouri: State *v.* Randolph (1 Mo. App. 15).
Based on prairie chickens from Kansas served in a restaurant in St. Louis, Mo.

1880, Massachusetts: Commonwealth *v.* Hall (128 Mass. 410).
Based on a woodcock killed in Pennsylvania and served in a dining room in Boston, Mass.

1881, Illinois: Magner *v.* People (97 Ill. 320).
Based on quail from Kansas offered for sale in Chicago, Ill.

1886, Missouri: State *v.* Farrell (23 Mo. App. 176).
Based on pinnated grouse, some of which were killed outside the State and sold in St. Louis, Mo.

1888, Michigan: People *v.* O'Neil (39 N. W. 1).
Based on quail from Missouri held in possession for sale in Detroit, Mich.

1891, Pennsylvania: Commonwealth *v.* Wilkinson (21 Atl. 14).
Based on quail from St. Louis, Mo., held in possession for sale in Pittsburg, Pa.

1892, Massachusetts: Commonwealth *v.* Savage (29 N. E. 468).
Based on short lobsters imported from Canada and held in possession in Suffolk County, Mass.

1894, California: Ex parte Maier (103 Cal. 476).
Based on a deer from Texas sold in Los Angeles, Cal.

Ohio: Roth *v.* State (51 Ohio 209; 37 N. E. 259).
Based on a quail purchased in the State of New York and served in the St. Nicholas Hotel in Cincinnati, Ohio.

1895, New York: People *v.* Gerber (36 N. Y. Supp. 720).
Based on a deer killed outside the State and exposed for sale at Corning, N. Y.

1896, Michigan: People *v.* O'Neil (110 Mich. 324).
Based on brook trout and quail from Illinois and sold in Detroit, Mich.

1897, District of Columbia: Javins *v.* United States (11 App. D. C. 345).
Based on quail from Illinois or Missouri exposed for sale in Washington, D. C.

Illinois: Merritt *v.* People (169 Ill. 218).
Based on quail, ducks, and prairie chickens from other States held in possession for sale in Henry County, Ill.

Maryland: Dickhaut *v.* State (37 Atl. 21).
Based on rabbits from West Virginia held in possession in Baltimore, Md.

1899, Maryland: Stevens *v.* State (43 Atl. 929).
Based on rabbits killed outside the State and exposed for sale in Baltimore, Md.

Oregon: State *v.* Schuman (58 Pac. 661).
Based on trout caught in Washington and offered for sale in Portland, Oreg.

1900, New York: People *v.* Buffalo Fish Co. (58 N. E. 34).
Based on three kinds of fish purchased in Ontario and Manitoba, Canada, and imported for sale at Buffalo, N. Y,

Washington: In re Davenport (102 Fed. 540).[1]
Based on a quail purchased in St. Louis, Mo., and served in a restaurant in Spokane, Wash.

1901, Michigan: People *v.* Dornbos (86 N. W. 529).
Based on lake trout from Michigan City, Ind., held in possession in Grand Haven, Mich.

Oregon: In re Deininger (108 Fed. 623).[1]
Based on trout from Washington offered for sale in Portland, Oreg.

1903, New York: People *v.* A. Booth Co. (86 N. Y. Supp. 272).
Based on brook trout imported from Kingston, Ontario, and sold in Schenectaday, N. Y.

1905, Minnesota: State *v.* Shattuck (104 N. W. 719).
Based on a ruffed grouse from Wisconsin sold in the Nicollet Hotel, Minneapolis, Minn.

1906, New York: People ex rel. Silz *v.* Hesterberg (184 N. Y. 126).
Based on a golden plover from England and a blackcock from Russia sold in Brooklyn, N. Y.

1907, Louisiana: State *v.* Schwartz (44 S. 20).
Based on aigrettes or heron plumes purchased in New York and offered for sale in New Orleans, La.

New York: People *v.* Stillman (102 N. Y. Supp. 351).
Based on partridges alleged to have come from Rhode Island and offered for sale in New York without the bond required by law.

New York: People *v.* Waldorf Astoria Hotel Co. (103 N. Y. Supp. 434).
Based on English pheasants killed in New Jersey and held in possession for sale in New York.

New York: People *v.* Weinstock (102 N. Y. Supp. 349).
Based on grouse taken outside the State and sold in New York.

1908, New York: People *v.* Martin (107 N. Y. Supp. 1076).
Based on possession by the Café Martin in New York City of 169 game birds, including 45 black grouse imported from Europe.

The decisions mentioned in the above list fall naturally into two groups; those decided in favor of the State and those decided against the State. The decisions favorable to the State are much more numerous than the others; in fact, only about 25 per cent of the cases have been adversely decided, as is shown by the following rearrangement of the preceding list according to favorable or unfavorable character:

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[1] A habeas corpus case in the United States circuit court.

DECISIONS ON POSSESSION AND SALE OF IMPORTED GAME AND FISH.

In favor of the State.	*Against the State.*
1875, Phelps *v.* Racey---N. Y.	1880, Commonwealth *v.* Hall---Mass.
1876, State *v.* Randolph---Mo.	1888, People *v.* O'Neil---Mich.
1881, Magner *v.* People---Ill.	1891, Commonwealth *v.* Wilkinson---Pa.
1886, State *v.* Farrell---Mo.	1897, Dickhaut *v.* State---Md.
1892, Comm. *v.* Savage---Mass.	1900, In re Davenport---Wash.
1894, Ex parte Maier---Cal.	People *v.* Buffalo Fish Co---N. Y.
Roth *v.* State---Ohio.	1903, People *v.* A. Booth Co---N. Y.
1895, People *v.* Gerber---N. Y.	
1896, People *v.* O'Neil---Mich.	
1897, Javins *v.* United States---D. C.	
Merritt *v.* People---Ill.	
1899, Stevens *v.* State---Md.	
State *v.* Schuman---Oreg.	
1901, In re Deininger---Oreg.	
People *v.* Dornbos---Mich.	
1905, State *v.* Shattuck---Minn.	
1906, People ex rel. Silz *v.* Hesterberg---N. Y.	
1907, People *v.* Stillman---N. Y.	
People *v.* Waldorf-Astoria Hotel Co---N. Y.	
People *v.* Weinstock---N. Y.	
State *v.* Schwartz---La.	
1908, People *v.* Martin---N. Y.	

The seven so-called adverse decisions were rendered by the supreme courts of Massachusetts, Maryland, Michigan, New York, and Pennsylvania, and the United States circuit court, eastern district of Washington. In two cases, People *v.* O'Neil, 1888, and Dickhaut *v.* State, 1897, unfavorable decisions were rendered necessary by defects in the statutes. These defects were afterwards removed and decisions on the same question in favor of the State were subsequently obtained in the same courts (People *v.* O'Neil, 1896, and Stevens *v.* State, 1899). In two other cases, settled by the supreme court of Massachusetts in 1880 and that of Pennsylvania in 1891, it was held that the statutes then in force were not intended to apply to any game or fish except that captured within the State, the question of the authority of the State to pass such laws relating to imported game not being considered. The two adverse New York cases, People *v.* Buffalo Fish Company, 1900, and People *v.* A. Booth Company, 1903, no longer stand as precedents in view of certain changes in the law and the decision of the court of appeals in the Silz case. It is interesting to note that In re Davenport, an adverse decision rendered by the United States circuit court in 1900, was not followed in the case of In re Deininger, and whatever weight of authority it may have had has now been nullified by the decision of the Supreme Court in the Silz case.

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